

OGC Has Reviewed

OGC 76-4949
10 September 1976

MEMORANDUM FOR: Legislative Counsel

STATINTL

FROM :
Associate General Counsel

SUBJECT : Proposed Revision of Executive Order 10450

1. At long last our written comments on the proposed revision of E.O. 10450:

a. Overall the draft order is a well-organized, well-drafted instrument. To that extent it is a considerable improvement over E.O. 10450.

b. The order would limit the "scope" of investigations of applicants, employees and persons to be given access to classified information. We understand the Office of Security is concerned with this aspect. Security's position in this regard would be the major CIA interest.

c. Section 6(c) requires positions of special trust be designated as such "only by the heads of departments." We understand it is intended that this authority would not be delegable. Also, the apparent intention is that a separate determination would be required as to each position. Annual certifications of such determinations are required. These provisions manifestly are burdensome and unnecessary. The authority to designate should be delegable, should not require position-by-position decisions and should not require annual certifications. Section 6(c) could be modified substantially as follows: "The designation of Positions of Special Trust shall be made by the heads of departments, agencies or major organizational components established by statute or executive order in accordance with the above criteria or by senior officials to whom the former officials have delegated the authority to so designate."

d. Perhaps the major problem with the order is its impact on the Agency's authority to investigate individuals without their knowledge or to decline to complete an investigation, to offer employment, to grant access to classified information or to terminate employment--on the basis of information developed in the course of a security investigation. The order would require that the individuals be informed of the investigations and give certain information concerning it. The investigation must be completed and adverse determinations require certain due process procedures. Many of these aspects run counter to Agency practices which appear to be either necessary or highly desirable.

e. There is a limited and somewhat imprecise exemption for CIA, NSA and the FBI (section 3(b)). It is believed the only practical solution to the problem mentioned in subparagraph (d) above is to broaden and clarify that exemption by modifying the last sentence of section 3(b) as follows: "Sections 7, 8 and 9 of this Order shall not apply to the CIA, NSA or the FBI." Alternatively, since the above sentence broadens the exemption to reach two agencies for which CIA is not responsible, section 3(b) could be modified by deleting from the last sentence the words "Central Intelligence Agency" and adding the above sentence, modified by deletions of the reference to NSA and the FBI, as a new third sentence to section 3(b).

f. Section 6 contains language that would prohibit the hiring of aliens. This provision would significantly disrupt the activities of offices that employ non-U.S. citizens, and should be appropriately modified. Also, recent news accounts indicate a new executive order in this area has been issued. We will pursue that matter.

STATINTL 2. advises proposed revisions or comments are being developed for Agency decision next week. He is participating in those efforts--with OLC, Security and others--and may want to suggest items additional to or different from the foregoing.

STATINTL

cc: Director of Security
Chairman, NFIB Security Committee